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13 UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17
18 v.

19 HONEYWELL INTERNATIONAL, INC.,
20 ALPHEUS KAPLAN, NEHEMIAH
DEVELOPMENT COMPANY,

21 Defendants.
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CIVIL ACTION NO.
2:06-cv-00387-MCE-JFM

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States" or "Plaintiff"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607, as amended, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Central Eureka Mine Superfund Site in Amador County, California (the "Site").

B. On April 19, 2006, Defendants Alpheus Kaplan and Nehemiah Development Company (together "Kaplan/Nehemiah") filed Answers to the United States' Complaint and also filed a Third-Party Complaint naming a number of Third-Party Defendants and asserting that Kaplan/Nehemiah as Third-Party Plaintiffs were entitled to contribution from each of the Third-Party Defendants for their respective proportionate share of any costs or damages rendered against Kaplan/Nehemiah as Defendants in the action brought by the United States.

C. Kaplan/Nehemiah have entered into Mutual Settlement and Release Agreements ("Settlement Agreements") with a number of the Third-Party Defendants to settle the claims between Kaplan/Nehemiah and respective Third-Party Defendants, who are referred to herein as the "Settling Third-Party

1 Defendants" and are listed in Attachment "A" hereto. These Settlement
2 Agreements provide for the settlement payments due from these respective
3 Settling Third-Party Defendants to be collected and held in trust by
4 Kaplan/Nehemiah and ultimately transferred to EPA after approval and lodging of
5 this Consent Decree.
6
7

8 D. By entering into this Consent Decree, Kaplan/Nehemiah (together
9 "Settling Defendants") and the Settling Third-Party Defendants do not admit any
10 liability to Plaintiff arising out of the transactions or occurrences alleged in the
11 Complaint or the Third-Party Complaint as amended by the First Amended Third-
12 Party Complaint.
13
14

15 E. The United States, Settling Defendants, and Settling Third-Party
16 Defendants (sometimes collectively referred to as "Parties" or individually
17 referred to as "Party") agree, and this Court by entering this Consent Decree finds,
18 that this Consent Decree has been negotiated by the Parties in good faith, that
19 settlement of this matter will avoid prolonged and complicated litigation between
20 the Parties, and that this Consent Decree is fair, reasonable, and in the public
21 interest.
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24 THEREFORE, with the consent of the Parties to this Decree, it is
25 ORDERED, ADJUDGED, AND DECREED:
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II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendants and Settling Third-Party Defendants. Solely for the purposes of this Consent Decree, the underlying Complaint and Third-Party Complaint, Settling Defendants and Settling Third-Party Defendants waive all objections and defenses that Settling Defendants or Settling Third-Party Defendants may have to jurisdiction of the Court or to venue in this District. Settling Defendants and Settling Third-Party Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the Parties and their respective successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Parties under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under

1 CERCLA shall have the meanings assigned to them in CERCLA or in such
2 regulations. Whenever terms listed below are used in this Consent Decree or in
3 any appendix attached hereto, the following definitions shall apply:
4

5 a. "CERCLA" shall mean the Comprehensive Environmental
6 Response, Compensation, and Liability Act of 1980, as amended,
7
8 42 U.S.C. § 9601, et seq.

9 b. "Consent Decree" shall mean this Consent Decree and all
10 appendices attached hereto. In the event that a conflict between this Consent
11 Decree and any appendix arises, the Consent Decree shall control.
12

13 c. "Day" shall mean a calendar day. In computing any period of
14 time under this Consent Decree, where the last day would fall on a Saturday,
15 Sunday, or federal holiday, the period shall run until the close of business of the
16 next working day.
17
18

19 d. "DOJ" shall mean the United States Department of Justice and
20 any successor departments, agencies or instrumentalities of the United States.
21

22 e. "EPA" shall mean the United States Environmental Protection
23 Agency and any successor departments, agencies or instrumentalities of the United
24 States.
25

26 f. "EPA Hazardous Substance Superfund" shall mean the
27 Hazardous Substance Superfund established by the Internal Revenue Code,
28

1 26 U.S.C. § 9507.

2
3 g. "Interest" shall mean interest at the rate specified for interest on
4 investments of the EPA Hazardous Substance Superfund established by
5 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance
6 with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect
7 at the time the interest accrues. The rate of interest is subject to change on
8 October 1 of each year.

10
11 h. "Matters addressed" means "Past Response Costs."

12 i. "Paragraph" shall mean a portion of this Consent Decree
13 identified by an Arabic numeral or an upper or lower case letter.

14
15 j. "Parties" shall mean the United States, Settling Defendants,
16 and Settling Third-Party Defendants, collectively.

17
18 k. "Party" shall mean either the United States, Settling
19 Defendants, or Settling Third-Party Defendants, individually.

20 l. "Past Response Costs" shall mean all costs, including but not
21 limited to direct and indirect costs, including enforcement costs, that the EPA,
22 DOJ on behalf of EPA, or any other person has paid or incurred at or in
23 connection with the Site through the date that this Consent Decree is approved and
24 entered by the Court, plus accrued Interest on all such costs through such date.

25
26 m. "Plaintiff" shall mean the United States.

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1 n. "Section" shall mean a portion of this Consent Decree
2 identified by a Roman numeral.
3

4 o. "Settling Third-Party Defendants" shall mean parties listed on
5 Attachment "A" hereto.
6

7 p. "Site" shall mean the Central Eureka Mine CERCLA Site,
8 located along Highway 49 near the city of Sutter Creek, Amador County,
9 California, and generally designated by the following property description: the
10 minehead area located on the east side of Sutter Hill Road, the Mesa de Oro
11 tailings impoundment area and surrounding subdivisions generally located near
12 the intersection of Highway 49 and Bryson Drive, and the Allen Ranch tailings
13 area, located approximately one half mile west of Allen Ranch Road, and two
14 miles north of State Route 104.
15
16

17 q. "United States" shall mean the United States of America,
18 including its departments, agencies and instrumentalities.
19

20 V. PAYMENT OF PAST RESPONSE COSTS

21
22 4. Within five (5) business days after Settling Defendants receive notice
23 from the United States that this Consent Decree has been lodged, Settling
24 Defendants shall deposit \$721,000 (consisting of \$600,000 from Settling
25 Defendants and \$121,000 collected by Settling Defendants from the Settling
26 Third-Party Defendants) into an escrow account bearing interest on commercially
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28

1 reasonable terms, in a federally-chartered bank (the "Escrow Account"). If the
2 Consent Decree is not entered by the Court, and the time for any appeal of that
3 decision has run, or if the Court's denial of entry is upheld on appeal, the monies
4 placed in the Escrow Account, together with accrued interest thereon, shall be
5 returned to Settling Defendants. If the Consent Decree is entered by the Court,
6 Settling Defendants shall, within fifteen (15) Days thereof, cause the monies in the
7 Escrow Account to be paid to EPA in accordance with Paragraphs 5 and 6 below.
8
9

10
11 5. The payment referenced in Paragraph 4 shall be made by FedWire
12 Electronic Funds Transfer ("EFT") to the Federal Reserve Bank of New York,
13 ABA = 021030004, Account No. 68010727, 33 Liberty Street, New York, New
14 York 10045. Field Tag 4200 of the FedWire message should read: (D 68010727
15 Environmental Protection Agency).
16

17
18 6. At the time of payment, Settling Defendants shall also send notice
19 that payment has been made to EPA and DOJ in accordance with Section XII
20 (Notices and Submissions). Such notice shall reference the EPA Region and
21 Site/Spill Identification Number 09AQ, DOJ case number 90-11-3-1692/1, and the
22 civil action number.
23

24
25 7. The total amount to be paid pursuant to Paragraph 4, \$600,000 from
26 Settling Defendants and \$121,000 collected by Settling Defendants from the
27 Settling Third-Party Defendants plus interest, shall be deposited in the EPA
28

1 Hazardous Substance Superfund.

2
3 **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

4 8. Interest on Late Payments. If Settling Defendants fail to make the
5 settlement payment under Paragraph 4 by the required due date, Interest shall
6 continue to accrue on the unpaid balance through the date of payment
7

8 9. Stipulated Penalty.

9 a. If the settlement payment of \$600,000 due from Settling
10 Defendants and the \$121,000 from the Settling Third-Party Defendants, held in
11 trust by the Settling Defendants, is not paid by the required date, Settling
12 Defendants shall be in violation of this Consent Decree and Settling Defendants
13 shall pay to EPA, as a stipulated penalty, in addition to the Interest required by
14 Paragraph 8, \$500 per violation per Day that such payment is late.
15
16

17 b. Stipulated penalties are due and payable within thirty (30) Days
18 of the date of the demand for payment of the penalties by EPA. All payments to
19 EPA under this Paragraph shall be identified as "stipulated penalties" and shall be
20 made by certified or cashier's check made payable to "EPA Hazardous Substance
21 Superfund." The check, or a letter accompanying the check, shall reference the
22 name and address of the party(ies) making payment, the Site name, the EPA
23 Region and Site Spill ID Number 09AQ, DOJ Case Number 90-11-3-1692/1, and
24 the civil action number. Settling Defendants shall send the check (and any
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1 accompanying letter) by United States mail to:

2 U.S. Environmental Protection Agency
3 Region 9 Superfund Receivable
4 P.O. Box 371099M
5 Pittsburgh, Pennsylvania 15251

6 c. At the time of each payment, Settling Defendants shall also
7 send notice that payment has been made to EPA and DOJ in accordance with
8 Section XII (Notices and Submissions). Such notice shall reference the EPA
9 Region and Site/Spill ID Number 09AQ, DOJ Case Number 90-11-3-1692/1, and
10 the civil action number.
11

12 d. Penalties shall accrue as provided in this Paragraph regardless
13 of whether EPA has notified Settling Defendants of the violation or made a
14 demand for payment, but need only be paid upon demand. All penalties shall
15 begin to accrue on the day after payment is due and shall continue to accrue
16 through the date of payment.
17

18 10. If the United States brings an action to enforce this Consent Decree,
19 and is successful in such action, the party or parties against whom enforcement is
20 sought, shall reimburse the United States for all costs of such action, including but
21 not limited to costs of attorney time.
22

23 11. Payments made under this Section shall be in addition to any other
24 remedies or sanctions available to Plaintiff by virtue of Settling Defendants'
25 and/or Settling Third-Party Defendants', as the case may be, failure to comply
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1 with the requirements of this Consent Decree.

2
3 12. Notwithstanding any other provision of this Section, the United States
4 may, in its unreviewable discretion, waive payment of any portion of the stipulated
5 penalties that have accrued pursuant to this Consent Decree. Payment of
6 stipulated penalties shall not excuse Settling Defendants or Settling Third-Party
7 Defendants from payment as required by Section V (Payment of Response Costs)
8 or from performance of any other requirements of this Consent Decree.
9
10

11 **VII. COVENANT NOT TO SUE BY PLAINTIFF**

12 13. Covenant Not to Sue by United States. Except as specifically
13 provided in Section VIII (Reservation of Rights by United States), the United
14 States covenants not to sue or to take administrative action against Settling
15 Defendants or the Settling Third-Party Defendants listed on Attachment "A"
16 pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past
17 Response Costs. This covenant not to sue shall take effect upon receipt by EPA of
18 all payments required by Section V, Paragraph 4 (Payment of Past Response
19 Costs) and any amount due under Section VI (Failure to Comply with Consent
20 Decree). This covenant not to sue is conditioned upon the satisfactory
21 performance by Settling Defendants and Settling Third-Party Defendants of their
22 respective obligations under this Consent Decree. This covenant not to sue
23 extends only to Settling Defendants and Settling Third-Party Defendants and does
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1 not extend to any other person.

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3 **VIII. RESERVATIONS OF RIGHTS BY UNITED STATES**

4 14. The United States reserves, and this Consent Decree is without
5 prejudice to, all rights against Settling Defendants and Settling Third-Party
6 Defendants with respect to all matters not expressly included within the Covenant
7 Not to Sue by Plaintiff in Paragraph 13. Notwithstanding any other provision of
8 this Consent Decree, the United States reserves all rights against Settling
9 Defendants and Settling Third-Party Defendants with respect to:
10

11
12 a. liability for failure of Settling Defendants or Settling Third-
13 Party Defendants to meet a requirement of this Consent Decree;
14

15 b. liability for costs incurred or to be incurred by the United
16 States that are not within the definition of Past Response Costs;
17

18 c. liability for injunctive relief or administrative order
19 enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

20 d. criminal liability; and
21

22 e. liability for damages for injury to, destruction of, or loss of
23 natural resources, and for the costs of any natural resource damage assessments.
24

25 **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS AND**
26 **SETTLING THIRD-PARTY DEFENDANTS**

27 15. Settling Defendants and Settling Third-Party Defendants covenant not
28

1 to sue and agree not to assert any claims or causes of action against the United
2 States, or its contractors or employees, with respect to Past Response Costs or this
3 Consent Decree, including but not limited to:
4

5 a. any direct or indirect claim for reimbursement from the
6 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or
7 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any
8 other provision of law;
9

10 b. any claim arising out of the response actions at the Site for
11 which the Past Response Costs were incurred, including any claim under the
12 United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to
13 Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
14

15 c. any claim against the United States pursuant to Sections 107
16 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response
17 Costs.
18

19 16. Nothing in this Consent Decree shall be deemed to constitute
20 approval or preauthorization of a claim within the meaning of Section 111 of
21 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).
22

23 17. Settling Defendants and Settling Third-Party Defendants respectively
24 agree not to assert any claims and to waive all claims or causes of action that
25 Settling Defendants or Settling Third-Party Defendants may have for all matters
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1 relating to the Site, including for contribution, against any person that has entered
2 into a final de minimis settlement under Section 122(g) of CERCLA,
3
4 42 U.S.C. § 9622(g), with EPA with respect to the Site as of the date of entry of
5 the Consent Decree. This waiver shall not apply with respect to any defense,
6
7 claim, or cause of action that Settling Defendants or Settling Third-Party
8 Defendants may have against any person if such person asserts a claim or cause of
9
10 action relating to the Site against Settling Defendants or Settling Third-Party
11 Defendants.

12 **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

13
14 18. Except as provided in Paragraph 17 (De Minimis Waiver), nothing in
15 this Consent Decree shall be construed to create any rights in, or grant any cause
16
17 of action to, any person not a Party to this Consent Decree. Except as provided in
18 Paragraph 17 (De Minimis Waiver), the Parties expressly reserve any and all rights
19
20 (including, but not limited to, any right to contribution), defenses, claims,
21
22 demands, and causes of action that they may have with respect to any matter,
23
24 transaction, or occurrence relating in any way to the Site against any person not a
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26 party hereto. Without limiting the generality of the immediately-above statement,
27
28 the waiver by Settling Defendants in Paragraph 17 does not extend to claims or
causes of action that Kaplan/Nehemiah as Third-Party Plaintiffs may have against
other Third-Party Defendants who have not settled the claims brought against

1 them in the Third-Party Complaint or in the First Amended Third-Party
2 Complaint.
3

4 19. The Parties agree, and by entering this Consent Decree this Court
5 finds, that Settling Defendants and Settling Third-Party Defendants shall not be
6 liable for claims for contribution regarding matters addressed in this Consent
7 Decree or for matters addressed in any other Consent Decree filed in this action as
8 provided by Section 113(f)(2) of CERCLA, 42 U.S.C. Section 9613(f)(2). For
9 purposes of this Consent Decree or any other Consent Decree filed in this action,
10 "matters addressed" are Past Response Costs.
11

12 20. Settling Defendants and Settling Third-Party Defendants agree that,
13
14 with respect to any suit or claim for contribution brought by it for matters
15 addressed by this Consent Decree, Settling Defendants or Settling Third-Party
16 Defendants will notify EPA and DOJ in writing of the claim no later than sixty
17 (60) Days prior to the initiation of such suit or claim. Settling Defendants and
18 Settling Third-Party Defendants also agree that, with respect to any suit or claim
19 for contribution brought against it for matters addressed by this Consent Decree, it
20 will notify EPA and DOJ in writing within twenty (20) Days of service of the
21 complaint or claim upon it. In addition, Settling Defendants and Settling Third-
22 Party Defendants shall notify EPA and DOJ within fifteen (15) Days of service or
23 receipt of any Motion for Summary Judgment, and within twenty (20) Days of
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1 receipt of any order from a court setting a case for trial, for matters addressed by
2 this Consent Decree.

3
4 21. In any subsequent administrative or judicial proceeding initiated by
5 the United States for injunctive relief, recovery of response costs, or other relief
6 relating to the Site, Settling Defendants and Settling Third-Party Defendants shall
7 not assert and may not maintain any defense or claim based upon the principles of
8 waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other
9 defenses based upon any contention that the claims raised by the United States in
10 the subsequent proceeding were or should have been brought in the instant case;
11 provided, however, that nothing in this Paragraph affects or limits the
12 enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII or
13 the ability of Settling Defendants and/or the Settling Third-Party Defendants to
14 raise defenses based on any applicable statutes of limitation.

15 **XI. RETENTION OF RECORDS**

16 22. Until ten (10) years after the entry of this Consent Decree, Settling
17 Defendants and Settling Third-Party Defendants shall preserve and retain all
18 records, reports, or information (hereinafter referred to as "records") now in its
19 possession or control, or which come into its possession or control, that relate in
20 any manner to response actions taken at the Site or the liability of any person
21 under CERCLA with respect to the Site, regardless of any corporate retention
22

1 policy to the contrary.

2
3 23. After the conclusion of the 10-year document retention period in the
4 preceding paragraph, Settling Defendants and Settling Third-Party Defendants
5 shall notify EPA and DOJ at least ninety (90) days prior to the destruction of any
6 such records, and, upon request by EPA or DOJ, Settling Defendants or Settling
7 Third-Party Defendants, as the case may be, shall deliver any such records to EPA.
8
9 Settling Defendants and Settling Third-Party Defendants may assert that certain
10 records are privileged under the attorney-client privilege or any other privilege
11 recognized by federal law. If Settling Defendants asserts such a privilege, Settling
12 Defendants shall provide Plaintiff with the following: 1) the title of the record; 2)
13 the date of the record; 3) the name, title, affiliation (e.g., company or firm), and
14 address of the author of the record; 4) the name and title of each addressee and
15 recipient; 5) a description of the subject of the record; and 6) the privilege
16 asserted. If a claim of privilege applies only to a portion of a record, the record
17 shall be provided to Plaintiff in redacted form to mask the privileged information
18 only. Settling Defendants and Settling Third-Party Defendants shall retain all
19 records that they claim to be privileged until the United States has had a
20 reasonable opportunity to dispute the privilege claim and any such dispute has
21 been resolved in the Settling Defendants' favor or the Settling Third-Party
22 Defendants' favor, as the case may be. However, no records created or generated
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1 pursuant to the requirements of this or any other settlement with EPA pertaining to
2 the Site shall be withheld on the grounds that they are privileged.
3

4 24. Settling Defendants and Settling Third-Party Defendants hereby
5 certify that, to the best of their knowledge and belief, after reasonable inquiry, they
6 have not altered, mutilated, discarded, destroyed or otherwise disposed of any
7 records, reports, or information relating to their respective potential liability
8 regarding the Site since notification of potential liability by the United States or
9 the State or the filing of suit against it regarding the Site and that it has fully
10 complied with any and all EPA requests for information pursuant to Sections
11 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section
12 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972.
13
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15

16 XII. NOTICES AND SUBMISSIONS

17
18 25. Whenever, under the terms of this Consent Decree, notice is required
19 to be given or a document is required to be sent by one party to another, it shall be
20 directed to the individuals at the addresses specified below, unless those
21 individuals or their successors give notice of a change to the other Party in
22 writing. Written notice as specified herein shall constitute complete satisfaction of
23 any written notice requirement of the Consent Decree with respect to the United
24 States, EPA, DOJ, and Settling Defendants, and Settling Third-Party Defendants
25 respectively.
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1 As to the United States:

2 As to DOJ:

3 Chief, Environmental Enforcement Section
4 Environment and Natural Resources Division
5 U.S. Department of Justice (DJ # 90-11-2-07733)
6 P.O. Box 7611
7 Washington, D.C. 20044-7611

7 As to EPA:

8 Chris Reiner
9 Civil Investigator
10 U.S. Environmental Protection Agency, Region IX
11 75 Hawthorne Street
12 San Francisco, California 94105

13 Larry Bradfish
14 Assistant Regional Counsel
15 Office of Regional Counsel
16 U.S. Environmental Protection Agency, Region IX
17 75 Hawthorne Street
18 San Francisco, California 94105

17 As to Settling Defendants:

18 Al Kaplan
19 532 San Ramon Valley Road
20 Danville, California 94526-4012

20 With a copy to:

21 Daniel F. Reidy, Esq.
22 LAW OFFICES OF DANIEL F. REIDY
23 3701 Sacramento Street, # 386
24 San Francisco, California 94118

24 As to Settling Third-Party Defendants:

25 Robert E. Miller and Meredith Miller
26 65 Hygrade Road
27 Sutter Creek, California 95685

28

1 With a copy to:
2 Kenneth M. Byrum, Esq.
3 5500 Ming Avenue, Suite 140
4 Bakersfield, California 93309

5 Jack Brusatori, Sr.
6 P. O. Box 234
7 Sutter Creek, California 95685

8 With a copy to:
9 Robert P. Soran, Esq.
10 DOWNEY BRAND LLP
11 555 Capitol Mall 10th Floor
12 Sacramento, California 95814

13 Robert Bugni & Margot Bugni
14 Leo Monson and Maurine Monson
15 c/o Leo Monson
16 220 Judy Drive
17 Sutter Creek, California 95685

18 With a copy to:
19 Brian R. Chavez-Ochoa, Esq.
20 Eric L. Gutierrez, Esq.
21 CHAVEZ-OCHOA LAW OFFICES, INC.
22 4 Jean Street, #4
23 Valley Springs, California 95252

24 Jean Hamilton and the Summit Apartments Partnership
25 14019 N. Cameo Dr. #1
26 Fountain Hills, Arizona 85268

27 With a copy to:
28 Steven C. Smith, Esq.
Douglas Campbell, Esq.
SMITH, CHAPMAN & CAMPBELL
A Professional Law Corporation
1800 North Broadway, Suite 200
Santa Ana, California 92706

1 Robert Earl Olson and Martha Wadell Olson
2 c/o Robert Earl Olson
3 P.O. Box 1600
4 Sutter Creek, California 95685

5 With a copy to:
6 John B. Allen, Jr., Esq.
7 LAW OFFICE OF JOHN B. ALLEN, JR.
8 P.O. Box 232
9 Sutter Creek, California 95685

10 Warren Noteware
11 1615 Sheridan Way
12 Stockton, California 95207

13 With a copy to:
14 Paul Balestracci, Esq.
15 NEWMILLER & BEARDSLEE
16 P.O. Box 20
17 Stockton, California 95201

18 **XIII. RETENTION OF JURISDICTION**

19 26. This Court shall retain jurisdiction over this matter for the purpose of
20 interpreting and enforcing the terms of this Consent Decree.

21 **XIV. INTEGRATION/APPENDIX**

22 27. This Consent Decree constitutes the final, complete and exclusive
23 agreement and understanding between the Parties with respect to the settlement
24 embodied in this Consent Decree. The Parties acknowledge that there are no
25 representations, agreements or understandings relating to the settlement other than
26 those expressly contained in this Consent Decree.

1 **XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

2 28. This Consent Decree shall be lodged with the Court for a period of
3 not less than thirty (30) Days for public notice and comment. The United States
4 reserves the right to withdraw or withhold its consent if the comments regarding
5 the Consent Decree disclose facts or considerations that indicate that this Consent
6 Decree is inappropriate, improper, or inadequate. Settling Defendants and Settling
7 Third-Party Defendants consent to the entry of this Consent Decree without
8 further notice.
9

10 29. If for any reason this Court should decline to approve this Consent
11 Decree in the form presented, this agreement is voidable at the sole discretion of
12 any party and the terms of the agreement may not be used as evidence in any
13 litigation between the Parties.
14

15 **XVI. SIGNATORIES/SERVICE**

16 30. The undersigned representative of Settling Defendants to this Consent
17 Decree and the Assistant Attorney General for the Environment and Natural
18 Resources Division of the United States Department of Justice certifies that he or
19 she is authorized to enter into the terms and conditions of this Consent Decree and
20 to execute and bind legally such Party to this document. The persons signing on
21 behalf of Settling Third-Party Defendants certify that they are authorized to enter
22 into the terms and conditions of this Consent Decree and to execute and bind
23 legally such Party to this document.
24

25 31. Settling Defendants and Settling Third-Party Defendants hereby agree
26 not to oppose entry of this Consent Decree by this Court or to challenge any
27
28

1 provision of this Consent Decree, unless the United States has notified Settling
2 Defendants and Settling Third-Party Defendants in writing that it no longer
3 supports entry of the Consent Decree.
4

5 32. Settling Defendants and Settling Third-Party Defendants shall
6 identify, on the attached signature page, the name and address of an agent who is
7 authorized to accept service of process by mail on behalf of that Party with respect
8 to all matters arising under or relating to this Consent Decree.
9

10 **XVII. FINAL JUDGMENT**

11 33. Upon approval and entry of this Consent Decree by the Court, this
12 Consent Decree shall constitute the final judgment between and among the United
13 States and Settling Defendants and Settling Third-Party Defendants. The Court
14 finds that there is no just reason for delay and therefore enters this judgment as a
15 final judgment under Federal Rules of Civil Procedure 54 and 58.
16

17
18 SO ORDERED THIS DAY OF _____, 2007.
19

20
21 _____
United States District Judge
22
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28

1 United States of America v Honeywell International, Inc., et al. - Consent Decree (Kaplan)

2

3 FOR THE UNITED STATES OF AMERICA:

4

5

22 October 2007

6

DATE

7

RONALD J. TENPAS
Acting Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

8

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10

11

12

ANGELA O'CONNELL
Senior Litigation Counsel
Environmental Enforcement Section
U.S. Department of Justice
301 Howard St., Suite 1050
San Francisco, California 94107
Telephone: (415) 744-6485
Fax: (415) 744-6476
angela.oconnell@usdoj.gov

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1 United States of America v. Honeywell International, Inc. et al. - Consent Decree (Kaplan)

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6

KEITH TAKATA
Superfund Division Director
U.S. Environmental Protection
Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

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LARRY BRADFISH
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

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1 United States of America v Honeywell International, Inc., et al. - Consent Decree (Kaplan)

2
3 FOR SETTLING DEFENDANTS AND THIRD-PARTY PLAINTIFFS ALPHEUS
4 KAPLAN AND NEHEMIAH DEVELOPMENT COMPANY:

5
6 JUN 15 2007

7 DATE

8 ALPHEUS KAPLAN,
9 an Individual

10 NEHEMLAH DEVELOPMENT COMPANY,
11 a California limited partnership

12 JUN 15 2007

13 DATE

14 ALPHEUS KAPLAN,
15 Its General Partner

16 Approved as to form:

17
18 6/14/07

19 DATE

20 DANIEL F. REIDY, ESQ.
21 Law Offices of Daniel F. Reidy
22 3701 Sacramento Street, # 386
23 San Francisco, CA 94118
24 Telephone: (415) 750-4210
25 Fax: (415) 750-4214
26 dfreidy@pacbell.net

1 United States of America v Honeywell International, Inc., et al. - Consent Decree (Kaplan)

2

3 FOR SETTLING THIRD-PARTY DEFENDANTS ROBERT E. MILLER AND
4 MEREDITH MILLER:

5

6

7 June 18, 2007
8 DATE

ROBERT E. MILLER,
an Individual

9

10

11 June 18, 2007
12 DATE

MEREDITH MILLER,
an Individual

13

14

15

Approved as to form:

16

17

18 June 18, 2007
DATE

KENNETH M. BYRUM, ESQ.
5500 Ming Avenue, Suite 140
Bakersfield, CA 93309
Telephone: (661) 861-6191
Fax: (661) 861-6190
ken@kmbmediation.com

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1 United States of America v Honeywell International, Inc., et al. - Consent Decree (Kaplan)

2
3 **FOR SETTLING THIRD-PARTY DEFENDANT JACK BRUSATORI, SR.:**

4
5
6 7-2-07
DATE

JACK BRUSATORI, SR.,
as Individual and as Trustee

7
8
9
10 Approved as to form:

11
12 7/9/07
13 DATE

ROBERT P. SORAN, ESQ.
DOWNEY BRAND LLP
555 Capitol Mall 10th Floor
Sacramento, CA 95814
Telephone: (916) 444-1000
Fax: (916) 444-2100
rsoran@downeybrand.com

1 United States of America v Honeywell International, Inc., et al. - Consent Decree (Kaplan)

2
3 FOR SETTLING THIRD-PARTY DEFENDANTS ROBERT BUGNI, MARGOT
4 BUGNI, LEO MONSON, AND MAURINE MONSON, DBA M & B
5 ENTERPRISES:
6

7 ROBERT BUGNI,
8 an Individual

MARGOT BUGNI,
an Individual

9
10 ~~ROBERT BUGNI~~

MARGOT BUGNI

11
12 Date: 7/27/07

Date: 7-27-07

13
14 LEO MONSON,
15 an Individual

MAURINE MONSON,
an Individual

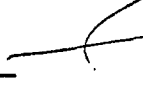
16
17 ~~LEO MONSON~~

MAURINE MONSON

18
19 Date: 7-27-2007

Date: 7/27/07

20
21 Approved as to form:

22
23 9/5/07 
24 DATE

BRIAN R. CHAVEZ-OCHOA, ESQ.
CHAVEZ-OCHOA LAW OFFICES, INC.
4 Jean Street, Suite # 4
Valley Springs, CA 95252
Telephone: (209) 772-3013
Fax: (209) 772-3090
chavezchoa@sbcglobal.net

1 United States of America v Honeywell International, Inc., et al. - Consent Decree (Kaplan)

2
3 FOR SETTLING THIRD-PARTY DEFENDANTS JEAN HAMILTON
4 INDIVIDUALLY AND THE SUMMIT APARTMENTS PARTNERSHIP ON
5 BEHALF OF ITS GENERAL PARTNERS (WALTER E. HAMILTON AND
6 JEAN HAMILTON, CHARLES O. ALLEN AND BARBARA ALLEN, FRANK
7 HARDY, CHRISTINA SUNG, THOMAS P. JONES AND JACQUELINE L.
8 JONES):

9 June 21, 2007
10 DATE

JEAN HAMILTON,
an Individual

11
12
13 SUMMIT APARTMENTS,
14 a California general partnership

15
16 June 21, 2007
17 DATE

18 By: JEAN HAMILTON,
Its General Partner

19
20 Approved as to form:

21
22 June 28, 2007
23 DATE

24 DOUGLAS CAMPBELL, ESQ.
25 SMITH CHAPMAN & CAMPBELL
26 1800 North Broadway, Suite 200
27 Santa Ana, CA 92706
28 Telephone: (714) 550-7720
Fax: (714) 550-1251
dcampbell@smithchapman.com

ALPHEUS KAPLAN,
an individual

NEHEMIAH DEVELOPMENT COMPANY,
a California limited partnership

Alpheus Kaplan

By: _____
Alpheus Kaplan
Its General Partner

Date: _____

Date: _____

Approved as to form:

Daniel F. Reidy, Esq. Date
Law Offices of Daniel F. Reidy
3701 Sacramento Street, # 386
San Francisco, CA 94118
Attorney for Alpheus Kaplan and Nehemiah Development Company

ROBERT EARL OLSON
an individual

MARTHA WADELL OLSON
an individual

Robert Earl Olson

71
Martha Wadell Olson

Date: 6-25-2007

Date: 6/25/07

Approved as to form:

John B. Allen, Jr., Esq. 6/15/07
Date
Law Offices of John B. Allen, Jr.
P.O. Box 232, Sutter Creek, CA 95685
Attorney for Robert Earl Olson and Martha Wadell Olson

1 United States of America v Honeywell International, Inc., et al. - Consent Decree (Kaplan)

2
3 FOR SETTLING THIRD-PARTY DEFENDANT WARREN NOTEWARE:
4

5 July 2, 2007
6 DATE

7 / WARREN NOTEWARE,
8 an Individual
9

10 Approved as to form:
11

12 7/2/07
13 DATE

14 NEUMILLER
15 PBB
16 7-2-07

14 PAUL BALESTRACCI, ESQ.
15 NEUMILLER & BEARDSLEE
16 P.O. Box 20
17 Stockton, CA 95201
18 Telephone: (209) 948-8200
19 Fax: (209) 948-4910
20 pbalestracci@neumiller.com

neumiller.com

21 PMB
22 7-2-07
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1 United States of America v Honeywell International, Inc., et al. - Consent Decree (Kaplan)

2
3
4 **ATTACHMENT A**

5

6 **SETTLING THIRD-PARTY DEFENDANTS** **SETTLEMENT**

7 **AMOUNTS**

8

9 (1) Robert E. Miller and Meredith Miller:	\$10,000.
10 (2) Jack Brusatori, Sr.:	\$25,000.
11 (3) Robert and Margot Bugni and Leo and Maurine Monson:	\$30,000.
12 (4) Robert and Margot Bugni and Leo and Maurine Monson:	\$30,000.
13 (4) Jean Hamilton individually and the Summit Apartments	
14 Partnership on behalf of its general partners (Walter E.	
15 Hamilton, Jean Hamilton, Charles O. Allen and Barbara E.	
16 Allen, Frank Hardy, Christina Sung, Thomas P. Jones, and	
17 Jacqueline L. Jones):	\$25,000.
18 (5) Robert Earl Olson and Martha Wadell Olson:	\$1,000.
19 (6) Warren Noteware:	<u>\$30,000.</u>
20	
21	
22	
23	Total \$121,000.

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